

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA**

§

§

**v.**

§

**CRIMINAL NO. 6:10CR15(1)**

§

**RICHARD LEE BENNETT.**

§

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On May 12, 2014, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant. The government was represented by Jim Middleton, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

Pursuant to a written Plea Agreement, Defendant pled guilty to the offense of Felon in Possession of a Firearm, a Class C Felony. This offense carried a statutory maximum imprisonment term of 10 years. The United States Sentencing Guideline range, based on a total offense level of 21 and a criminal history category of IV, was 57 to 71 months. On October 19, 2010, U.S. District Judge Leonard Davis sentenced Defendant to 37 months of imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include access to financial information, mental health treatment, and substance abuse testing and treatment. Defendant completed the term of imprisonment and began his period of supervised release on August 15, 2012.

Under the terms of supervised release, Defendant was to refrain from excessive use of alcohol and not to purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. Additionally, Defendant was to follow instructions and answer truthfully to all

inquiries by the probation officer. In its petition, the government alleges that Defendant violated this term of supervised release when he submitted a urine specimen on January 8 and April 22, 2013 that tested positive for methamphetamine; failed to report for a urine specimen on March 17, 2014; failed to report to the probation office as instructed on April 2, 2014; failed to attend scheduled mental health counseling and appointments on February 19, March 18, and March 25, 2014 and was unsuccessfully discharged on April 8, 2014; and failed to submit urine specimens on March 12, 17, 22, 25, and April 12, 2014.

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. Therefore, should the Court find by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine, Defendant will be in violation of Texas Health and Safety Code §481.115 and have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court shall revoke a term of supervision. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

Should the Court find by a preponderance of the evidence that Defendant violated the conditions of supervised release by failing to follow instructions of the probation officer, failing to report to the probation office as instructed, failing to attend mental health treatment appointments, unsuccessful discharge from a mental health treatment program and failure to submit urine specimens, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may revoke or extend a term of supervision and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering

Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade C violation is 6 to 12 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations above. The government recommended custody for 9 months with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Richard Lee Bennett be committed to the custody of the Bureau of Prisons for a term of 9 months with no supervised release to follow. The Court further recommends incarceration at FCI Texarkana, Texas.

Defendant has waived her right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to U.S. District Judge Leonard Davis for adoption immediately upon issuance.

**So ORDERED and SIGNED this 13th day of May, 2014.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE